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Supreme Court of the United States

OCTOBER TERM, 1952 1953

No. 777-57

GEORGE LEWIS DICKINSON,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

REPLY TO BRIEF IN OPPOSITION

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MAY IT PLEASE THE COURT:

Follow the Government! Then it will be impossible for a minister of Jehovah's witnesses ever to have any rights under the draft law. All their ministers who fit the exemption under the act will then be pushed out by that sophistry from under the protecting cover of the act. Congress did not intend to thus discriminate. It did not leave any room for

this Court to permit draft boards to do it either. It ought to be stopped. Now and here are the time and place to do it too.

The facts here are established by the undisputed evidence. They show that Dickinson is the presiding minister of a congregation of Jehovah's witnesses. He stands in relation to that congregation of Jehovah's witnesses as does the orthodox popular minister of the churches that are accepted by lawyers in the Department of Justice and members of this Court.

You all are asked by the Justice Department to ignore this and treat this full-time minister of Jehovah's witnesses differently from the way you would treat the popular clergyman of the church acceptable to you—whose case is no stronger than that of this witness of Jehovah. This is because Dickinson, when not in the pulpit, also engages in home-to-home missionary work. Do you want to escape being trapped by this argument for discrimination? If so, let me briefly answer the Government and apply to the facts the terms of the act. They show that Dickinson is an ordained minister of religion and entitled to the benefits of the law, the same as the popular clergyman.

The Government says that Dickinson "failed to show that he stood in the relationship of minister to a group of congregants of his faith". (See page eleven of its brief.) The undisputed facts to the contrary impeach this statement. (See the references to the record on page eleven of the petition for writ of certiorari.) It is necessary to ignore the truth that appears in these parts of the record, or state a different case, in order to escape the fact that Dickinson has the same position with Jehovah's witnesses as does the orthodox clergyman.

Dickinson's position as a presiding minister of the congregation in the reply of the Government is covered over with fog produced by ignorance of religion or reckless disregard of it by the Government. It is said that Dickinson's

activity was the same kind as that consistently rejected in other cases. This also is not true. In the cases cited by the Government, moreover, the denial of the ministry exemption was approved by the courts because of the full-time secular work performed by the men.

It was not because their preaching activity was not a proper way to minister a religion. The courts did not hold that it was not proper preaching. This Court did not do it in the case of *Cox* v. *United States*, 332 U. S. 442. (Compare *Murdock* v. *Pennsylvania*, 319 U. S. 105, 109. See pages 41-44 of the petition for writ of certiorari in this case.) The courts merely concluded that the religious preaching of the men involved was not their vocation. Here the contrary is shown. This difference pushes aside the cases relied upon by the Government.

Dickinson does have a position of leadership over the congregation of Jehovah's witnesses similar to that of the orthodox clergy. The Government attempts to bury this and hide it from the Court. This is done by arguing that his main activities consisted in his home-to-home missionary work also done by other members of the congregation. This *non sequitur* type of argument again leads to error, discrimination and destruction of law and the intention of Congress to avoid unequal administration of the law.

Congregational duties of Dickinson required fifty hours monthly of his time. (See page eleven of the petition.) His preaching before the church required as much time as is normally spent by the orthodox clergyman in his actual preaching before the flock in the church building. Dickinson, therefore, showed that he was the presiding minister and had the same relationship before the assembled group at the church meeting place as does the ordinary orthodox clergyman. When he showed, as he did to the draft boards, that he pursued the duties of his ministry as his vocation, that was enough. Wasn't it? It brought him under the exemption.

Doesn't it? Was there no basis in fact for the denial of it to him? Indeed there was none.

The Government makes a discriminatory and specious argument. By it, it attempts to hand-grenade this exempt status. This is by referring to the 120 hours Dickinson devoted monthly to the home-to-home missionary work of Jehovah's witnesses. Does this activity prevent you from saying that the denial of the exemption to Dickinson was without basis in fact? If it does then you have become the religious hierarchy for America with the power to tell the preachers what kind of religious work to do, when not in the pulpit, so as to find favor with you and the law. Certainly this is beyond your competency. The Government arrogated too much to itself when it suggesteed that you do this. You ought to cast it out.

Even the performance, full time, by a minister of the unorthodox door-to-door missionary work, without doing any preaching from a pulpit, is no basis in fact for the denial of the exemption. (*Hull* v. *Stalter*, 151 F. 2d 633 (7th Cir.)) The Selective Service System has recognized the door-to-door missionary work done by Jehovah's witnesses to be within itself sufficient to entitle a "pioneer" (minister of Jehovah's witnesses engaged in that work as his vocation) to the exemption.—See the report of the National Director to the president referred to in *Hull* v. *Stalter*, 151 F. 2d 633 (7th Cir.).

Whether a preacher wants to call on the sick or comfort those that mourn or who sigh and cry after he leaves the pulpit is his business. It is no concern of the law. The only question for this Court is: Does he pursue his ministerial duties, regardless of what they are, as his vocation? If he does he is entitled to his exemption. Dickinson does just this. There is no basis in fact for the denial of his claim for exemption.

When not in his pulpit as the presiding minister, Dickinson could build up the size of his church by going out into

the highways and byways to bring into his congregation the lost sheep by primitive door-to-door preaching. He could, as leader of the group, call to his aid the help of others in his congregation. The fact that such others may be missionaries and help him by engaging in door-to-door ministry with him for the purpose of increasing the church attendance at the congregational meeting did not change his exempt status.

Whether all the other members of his church claimed to be ministers or not has no place here. This case is not to be decided on what the other people in the congregation claim or did with their time. The Government would try to trip you and throw you into the false conclusion that, because others of Jehovah's witnesses in the group did the same kind of missionary work that Dickinson did, he is not a minister, for they are not ministers.

The status of other members in the congregation under the act and regulations is immaterial. The question to be determined here is: What was Dickinson doing with his time? Was the preaching work his vocation? If it was, then the draft board denied him the exemption without basis in fact. Didn't it?

If you accept what the Government pushes upon you, will you not become the religious hierarchy of the country? Will you have to say what a preacher should do when he leaves the pulpit? What will you say where the case shows that the clergyman merely stays home, lives off the fat of the land and does no religious work when out of the pulpit? What will you do if a clergyman is a mere administrator —never regularly preaching—in a religious edifice like a bishop or archbishop or a cardinal who are even without a designated single congregation? What will be the consequences to these clergymen as to what they do when out of the pulpit?

Don't these questions logically follow the argument of the Government? Is the detailed work of a clergyman in

performance of his church duties to a congregation of any concern of the draft boards or the courts? No! The only thing to be determined is: Does the undisputed evidence show that the ministry is the vocation of the preacher? If the ministry is his vocation then there is no basis in fact for the denial of an exemption, regardless of what manner the clergyman carries out his ministerial duties.

The clergyman may be only an administrator and not a speaker in his denomination, like a bishop or archbishop or cardinal, and thereby never regularly appear in the pulpit. Such clergymen appear very infrequently in the pulpit. Rarely, in fact. In actuality, some never. Others may do nothing but read and study during the week and preach only one hour weekly.

Some clergymen may visit the poor or the sick when out of the pulpit. They may have a small congregation and need to build it up through doing door-to-door missionary work. They may preach like Jesus and his apostles from home to home—never in a pulpit. Regardless of which of these methods they devote their time to (when out of the pulpit) they perform their duties as ministers. The performance of any or all of these duties would prove—rather than disprove—the exemption. They impeach the words of the Government against Dickinson here.

No effort is here made to enlarge the definition of the term "minister of religion" in the act. Congress narrowed the term by using the word "vocation". It eliminated those that pursued the ministry as their "avocation" or incidentally to secular work. This narrow definition is accepted by petitioner. However, neither the Government nor the courts below nor the draft boards want to be bound by it.

We are bound by what Congress said. We must accept Congress for what it says. Petitioner says he is covered by the exemption spelled out by Congress. The Government, the courts below and the draft boards in this case do not stop there. They go farther. They have tried to narrow and

chisel down the definition of the term "minister of religion". Their illegal effort at this should be driven away from the act by this Court.

Because the report of the Congressional committee (quoted from on page fourteen of the Brief in Opposition) refers to all Jehovah's witnesses claiming to be ministers, this does not support the Government here. It merely shows an intent not to exempt all of them. It does not say that all should be denied or that none are ministers—the position of the Government. It simply provided the background for the report, which showed an intention to limit and protect only all those preachers, including Jehovah's witnesses, who pursued the ministry as their vocation.

To say that Congress intended to cast off completely all Jehovah's witnesses is to strain out the gnat and swallow the camel. Surely this Court will not let the Government make it attempt this, the impossible. The only thing the Court must take in this case is the definition prepared by Congress and the facts in this case. Both go together. Integrated, they establish no basis in fact for the denial of the exemption. The ministry was the vocation pursued by Dickinson.

The late filing of the conscientious objector claim is no basis in fact for the denial of the ministerial claim. It does not bear on the status of a minister. The two are separate and distinct. It is no proof that Dickinson was not a minister. Sincerity and good faith, while elements of conscientious objection, are no part of the definition of a minister of religion. He explained why he did not file the claim before. There are other claims that can be made by registrants. Suppose Dickinson had been a father and that he had not shown this until shortly before the issuance of the order to report. (Compare In re *Abramson*, 196 F. 2d 261 (3rd Cir.).) This would not have authorized the boards to deny or reject the undisputed evidence that he was a minister of religion.

The ministry claim is to be determined on the relevant facts. The conscientious objector status did not have to be

disclosed to get the ministry exemption. It is not proper to say that the nondisclosure of it until after the induction order issued is basis in fact. Being immaterial to the ministerial definition the late disclosure may be disregarded. It should be remembered that this was a fact that never could have been considered by the draft boards at the time of classification. The form was not filed until after the classification. Not being considered by the boards at the time of classification it should not be considered *de novo* by this Court for the first time after classification.

Dickinson may have been under the erroneous belief that the conscientious objector claim was not to accompany the claim for classification as a minister. (See the petitions for writs of certiorari in *Neal* v. *United States*, and *Davis* v. *United States*, Nos. 791 and 792, October Term, 1952, at pages 21-28 and 20-24, respectively.) The Government has (in hundreds of cases of investigations of the conscientious objector status of Jehovah's witnesses) illegally informed them that the conscientious objector claim cannot be made simultaneously with the claim for ministerial classification. —See Appendix A, pages 55-65 of the petition in *Neal* v. *United States*, No. 791, October Term, 1952.

Conclusion

WHEREFORE, the petition for writ of certiorari ought to be granted for the reasons discussed above, as well as those stated in the petition for writ of certiorari.

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